

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

CHARLIE PENA,

Plaintiff,

v.

CIV 11-1102 GBW/WDS

SCRIP, INC., d/b/a/
Massage Warehouse,

Defendant.

**ORDER DENYING MOTION TO STRIKE
PLAINTIFF'S EXPERT WITNESSES**

This matter comes before the Court on Defendant's Motion to Strike Plaintiff's Expert Witnesses (Doc. No. 48). Defendant claims Plaintiff failed to properly disclose his experts and failed to make them available for deposition. Plaintiff identified his medical experts generically in the JSR and provided releases. Dr. Rasty, the liability expert, was also identified in the JSR and a report was disclosed in June of 2012. The medical witnesses do not have to produce a report if testifying as to their treatment. Under Fed. R. Civ. P. 26(a)(2)(C), however, if not producing a report they must provide a summary of facts and opinions to which they will testify. Plaintiff should comply with that requirement.

The question of whether any witness shall testify at trial is one for the presiding judge.

IT IS THEREFORE ORDERED that Defendant's Motion to Strike Plaintiff's Expert Witnesses (Doc. No. 48) is denied with the caveat that Plaintiff shall

expeditiously provide statements of fact and opinion as set out above. This should occur in advance of the depositions so no further delay occurs.



W. Daniel Schneider
United States Magistrate Judge